

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ASPEN AMERICAN INSURANCE COMPANY,
as subrogee of 31ST STREET ZEF LLC,

Plaintiff,

23-cv-4850 (PKC)

-against-

ORDER

ALLSTATE SPRINKLER, LLC, et al.

Defendant.

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CASTEL, U.S.D.J.

The limited subject matter jurisdiction of a district court is best addressed at the outset of a case. It falls upon the Court to raise issues of subject matter jurisdiction sua sponte.

An action premised upon diversity of citizenship in which a limited liability company is a party must allege the citizenship of natural persons who are members of the limited liability company and the place of incorporation and principal place of business of any corporate entities that are members of the limited liability company. See Handelsman v. Bedford Village Associates Ltd. Partnership, 213 F.3d 48, 51-52 (2d Cir. 2000) (citing Cosgrove v. Bartolotta, 150 F.3d 729, 731 (7th Cir. 1998)).

Plaintiff Aspen American Insurance Company, as subrogee of 31st Street Zef LLC, brings this action invoking subject matter jurisdiction by reason of diversity of citizenship. The original complaint alleged that “Defendant Allstate Sprinkler, LLC . . . was and is a domestic business corporation organized and existing under the laws of the State of New York, with a principal place of business located at 1869 White Plains Road, Bronx, New York 10462.” (ECF 1 ¶ 3.) Because a limited liability company, or LLC, is not a corporation, the allegation

appeared internally inconsistent. The Court ordered to plaintiff to either (1) amend its complaint to allege the citizenship of each of member of Allstate Sprinkler, LLC, or (2) submit an affidavit with documentary evidence establishing that Allstate Sprinkler, LLC is a corporation rather than a limited liability company. (ECF 6.)

On June 28, 2023, plaintiff filed an amended complaint. (ECF 7.) The amended complaint has added a second defendant, Allstate Sprinkler Corp. (Id.) The allegations regarding Allstate Sprinkler, LLC have been amended to read:

In 2021, and after the events giving rise to the causes of action herein, Allstate Corp. was wholly acquired by a newly-formed entity known as Allstate Sprinkler, LLC (hereinafter “Allstate LLC” and together, with Allstate Corp., hereinafter as “Allstate”).

. . . Upon information and belief, the member of Allstate LLC is Adam Goodrich, a New York resident.

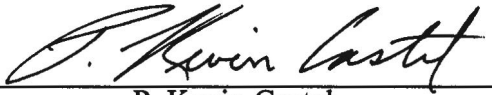
(Id. ¶¶ 5-6.)

The complaint does not specify what corporate form the “entity” known as Allstate Sprinkler, LLC has taken, but its name indicates it is a limited liability company. In that case, the complaint must allege the citizenship of each natural person who is a member of the limited liability company. Adam Goodrich is alleged to be “a New York resident,” but the complaint does not allege his citizenship. An individual’s citizenship is determined by his domicile, which is “the place where a person has his true fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning.” Palazzo ex rel. Delmage v. Corio, 232 F.3d 38, 42 (2d Cir. 2000) (quoting Linardos v. Fortuna, 157 F.3d 945, 948 (2d Cir. 1998)). However, “[d]omicile is not synonymous with residence; a party can reside in one place and be domiciled in another.” Kennedy v. Trustees of Testamentary Trust of

Will of Kennedy, 633 F. Supp. 2d 77, 81 (S.D.N.Y. 2009) (Pauley, J.) (citing Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 47-49 (1989)).

Within 14 days of this Order, plaintiff shall amend its complaint to allege the citizenship of Adam Goodrich. If by this date plaintiff either fails to amend or is unable to amend to truthfully allege diversity of citizenship, then the action will be dismissed for lack of subject matter jurisdiction without further notice to any party.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
June 29, 2023